BOOK REVIEWS

Law and Practice of Receivers. By Ralph E. Clark. Second Edition. Cincinnati, The W. H. Anderson Co., 1929. Vol. I, pp. cviii, 1012. Vol. II, pp. iii, 1013-2053.

The second edition fulfills the same unique role as the first—it is practically the only exhaustive, modern, American book in the field. The first edition came out just before the close of the World War. Shortly thereafter came the disastrous inventory deflation. On its heels came innumerable receiverships, as a result of which a decade of litigation followed. The development of the law of receiverships during that decade has been unique. That alone called for a new edition.

The mechanical features of this edition are superb. In them are included a table of cases, a splendid index, and very frequent cross-references both in the text and index. The subject matter of this edition is substantially the same as that of the first. The order of chapters has been slightly changed. Some of the old chapters have been consolidated. Most notable is the old chapter on "Statutes Affecting Receiverships" which has been distributed widely to places where the matter has been most pertinent. New chapters have been added, conspicuously "Costs and Expenses of Receivership," "Banks and Building and Loan Association Receiverships," and "Reorganization of Corporations." The old chapter on "Trading with the Enemy and Custodians of Alien Property" has been omitted. One hundred and fifty-seven forms appear in this edition as against one hundred and ninety-one in the other. They have been more carefully edited and on the whole seem to constitute a better selection. A radical change in order of presentation was made by presenting the general law of receiverships in the first volume and by devoting the second volume to a series of chapters classified according to the type of receivership.

The encyclopedic features of the treatise are in most respects excellent. The citation of cases is quite exhaustive. Both English and American cases have been carefully selected and cited. The familiar landmarks are present, with a vast amount of lesser authorities. The changing current of the law has been followed carefully and recent leading cases displacing ancient ones have been noted. The same can be said for the statutes pertinent to the various problems. The major defect of the encyclopedic features is the failure to cite many leading law review articles, comments and notes.[1] In a treatise of this kind it is obviously impossible to develop all the analytical distinctions and refinements necessary to the disposition of many cases. If the reader were given the key to the wealth of material in the law reviews, the utility of the book would be enhanced and the analysis lacking in the treatise would be furnished. The increasing reliance of the bench and the bar on law

[1] Examples are Blair, *The Priority of the United States in Equity Receiverships* (1925) 39 HARV. L. REV. 1; Rosenberg, *Reorganization—The Next Step* (1922) 22 COL. L. REV. 14; Swaine, *Reorganization—The Next Step: A Reply to Mr. James N. Rosenberg* (1922) 22 COL. L. REV. 121; Swaine, *Reorganization of Corporations: Certain Developments of the Last Decade* (1927) 27 COL. L. REV. 901; Weiner, *Conflicting Functions of the Upset Price in a Corporate Reorganization* (1927) 27 COL. L. REV. 132.

review literature is creating an increased demand for that commodity. The same criticism can be made for failure to cite standard business treatises.[2] Though this book does not purport to treat the business phases of the problem, it is occasionally necessary for the student to have the picture of the business problem in order to understand and evaluate the rule of law. Thus a reference to such pertinent material would be extremely valuable.

Most books of this scope have a tendency to be encyclopedic rather than analytical. The tendency is to treat the general principles, to note the common exceptions, and to make no serious attempt to subject the decisions to an analytical process in an endeavor to measure accurately the distance the decisions have moved from a given point or to judge with approximation the goal toward which they are likely headed. A book largely encyclopedic has stiff competition from the digests found in every law library. It is difficult to classify this treatise in either of the two categories. It is more analytical on the whole than the first edition. Yet it falls short of the standard set in other fields. Many opportunities were passed by. The evolution of the so-called rule of *Fosdick v. Schall* down to *Gregg v. Metropolitan Trust Co.* has analytical possibilities just barely touched. The same can be said for the rule crystallized by the latter case. The treatment of the priorities of the United States for various claims is likewise too cursory. The problems beneath the surface are perplexing and need treatment. The reorganization of corporations is summarily treated in a separate chapter. Only the peaks are touched. The intricate problems relating to the reorganization plan, the protective committees, the upset price, and the sale are not handled effectively. Perhaps it is too much to expect of a book on receivers, but if the chapter is worth including it is worth effective—and necessarily, analytical—treatment.

In spite of these analytical deficiencies the book is far from being a colorless digest. At times the author has written in an extremely engaging style and presented the subject matter more effectively than most of these types of books do. Perhaps the best example is the introduction to the six months' rule with the exceedingly human account of the man with the "coon skin cap" who was so aggrieved with the decision denying his claim that he committed suicide. The effect of that on the judge's later conduct respecting these claims is an interesting sidelight on how rules of law are sometimes made. In other places the author rides ahead of the law indicating directions it should take and the reasons therefor. These parts are in main convincing and should have a beneficial effect on the development of the law of this subject.

The encyclopedic features of the book alone recommend it to the bar, the bench and other students of law. The higher standard which it can justly claim will make it invaluable to those at work in this field. Its evolution in the first and second editions as an increasingly analytical work promises that in the future it can become a genuinely classical work on the subject.

New Haven, Conn. WILLIAM O. DOUGLAS.

Die Rechtsgrundlagen der internationalen Kartelle. By R. Wolff. Berlin, Carl Heymann's Verlag, 1929. pp. xvl, 182. 12 Mks.

In the past, problems of an economic nature primarily engaged the attention of those interested in the formation and operation of international cartels. Comparatively little thought was given to legal matters.

[2] For example, DEWING, FINANCIAL POLICY OF CORPORATIONS (1926).

However, with the rapid expansion and increasing complexity of world trade during the past decade a marked change has come about. Modern methods of "rationalizing" production and distribution make it necessary to pay much greater attention than formerly to permanency and structural durability in the formation of private agreements linking together producers or distributors of different countries. Instead of a somewhat negative role, legal considerations have, in consequence, lately assumed a positive character of increasing importance.

Special laws applying to cartels, enacted in recent years in Germany, Norway, Sweden, Canada, France, Argentina, and Czechoslovakia, not to mention the anti-trust laws of the United States subsequent to 1914, numerous unfair competition statutes, and various changes made in foreign criminal and civil codes, make it necessary that legal advisors give most careful attention to such matters as conflict of laws, the ever increasing number of foreign court decisions on cartels and questions of extra-territorial jurisdiction, in so far as such legislation and judicature may apply to international cartels.

In view of this new state of affairs the first appearance of a systematic treatise, such as Dr. Wolff's book, on the legal bases of international cartels, is to be greatly welcomed. All the more so, if, as the author has succeeded in doing, the subject matter involved is presented in a comprehensive and usable manner.

Following an introductory chapter dealing largely with terminology, the author summarizes five sources of international cartel-law, each in its historical and local setting, viz., (1) special laws applicable to cartels, (2) criminal and civil law provisions, (3) company laws, (4) conflict of laws, (5) trade practices and customs. A separate chapter each deals with international cartels of a looser type (conventions, ententes, gentlemen's agreements) and with those of a higher type (syndicates, comptoirs). In a further chapter the author analyzes more in detail the various cartel laws, and criminal and civil statutes relating thereto, and discusses such special topics as provisions affecting the public order, violations of foreign cartel laws, withdrawal from and dissolution of cartels, and safeguarding provisions in cartel agreements. The concluding chapter deals with procedural questions, including such as arise in connection with cartel arbitration tribunals, enforcement of arbitration awards, and the fixing of surety guarantees.

The great amount of detail work done by the author, and the mass of material assembled and analyzed by him is reflected by the elaborate bibliography (pp. x-xvl) and the excellent index (pp. 176-182).

With all its merits, and they predominate, one cannot escape the impression that the author has adduced his material chiefly from books and periodicals, some dating years back, and much less from practical business life and current experience in the operation of international cartels. But one international cartel agreement, that of the European Steel Entente, is printed verbatim in the text. Several others are available, and could have been used to advantage for purposes of illustration and analysis. Moreover, but meagre illustrative data pertaining to the numerous recent agreements involving patents and trademarks, especially in the electric and chemical industries, are given.

The same criticism applies to the use made of court decisions and administrative rules and regulations, which at least in the United States at times contain more guiding principles than can be ascertained by a mere reading of the text of an anti-trust statute. For example the important court decisions made in recent years involving the application of

the anti-trust provisions of the Wilson Tariff Act, as amended in 1913, are not evaluated adequately.

While the importance of the United States Export Trade Act (Webb-Pomerene Act) in its bearing on international cartels is pointed out by the author in several places, such an important provision as section 4 of that act, which relates to extraterritorial jurisdiction over all American exporters, individuals as well as export associations (*see* (1919) 29 YALE L. J. 29-45), is not mentioned, nor is the practical application and operation of that act set forth in more than general statements.

As American participation in international cartels is increasing steadily from year to year, corporation lawyers in this country will find this book a helpful guide in a field of law about which little has been published thus far in the United States.

Washington, D. C. WILLIAM F. NOTZ.

Roman Law in Medieval Europe. By Paul Vinogradoff. Oxford, Clarendon Press, 2d Ed. with Preface by F. de Zulueta, 1929. pp. 155.

The Development of European Law. By Munroe Smith. Columbia University Press, 1928. pp. xxvi, 316.

Vinogradoff's *Lectures on Roman Law in Medieval Europe,* originally published in 1909, were the first English account of the medieval life of Roman law in Western Europe. Since that time Professor Meynial's sketch in *The Legacy of the Middle Ages* (Oxford, 1926) and Professor H. D. Hazeltine's longer essay in Volume V of *The Cambridge Medieval History* (1926) have appeared, but neither of these, however excellent, detract in the least from the merits of Vinogradoff's work. Vinogradoff's purpose was to characterize the principal epochs of the development of Roman Law in Western Europe, not to trace its history in all its details, and in this he has succeeded as only a great artist could. By dwelling upon the essential, by the use of the concrete, by well chosen, typical illustrations, he has revealed something of the spirit or actual life of Roman Law in medieval Europe. It is because of this fact that these lectures will have permanent value.

In the second edition, brought out by Professor de Zulueta, the list of works cited at the end of each lecture has been brought up to date. No other additions or changes were found necessary.

The Development of European Law by Munroe Smith covers, in the nature of things, the same ground as Vinogradoff's *Roman Law in Medieval Europe,* for the influence of Roman Law constitutes a most important factor in the development of European law. Vinogradoff relates the story of Roman Law with reference to Italy, France, England and Germany. Munroe Smith includes in addition Spain, the Netherlands, Switzerland and the Scandinavian countries. The latter's account, however, contains in the main only a recital of the central facts. Vinogradoff goes more fully into the subject. In discussing Roman Law in England, for example, some space is given to a discussion of the influence of the teaching of Roman Law in England in the 12th and 13th centuries upon the development of English law, especially upon the English view of seisin. Many pages are devoted to a consideration of Bracton's work on the *Laws and Customs of England* and his borrowings from Roman Law. Munroe Smith disposes of the history of Roman Law in England in two pages.

In tracing the development of European law, Munroe Smith undertook a very laborious task. It constituted at the same time an entirely new

venture. Books had been written on the history of Roman Law in Europe, on the history of feudalism, canon or ecclesiastical law, and commercial law, or on the history of the law of individual countries, but no one had attempted to show the development of European law as a whole. All of this vast material Munroe Smith has compressed within the brief compass of 292 pages. Approximately one-fourth of this space (Book 1) is devoted to an exposition of the early Germanic law. Munroe Smith gave lectures on Roman Law in a separate course, and these are not included in the present volume. Book II is entitled "The Interpenetration of Roman and Germanic Laws," the first part of which covers the same material that Vinogradoff discussed in his first lecture, on "The Decay of Roman Law." Munroe Smith, however, deals with the development and codification of Germanic, as well as Roman Law. What the author has to say about the rules developed in the Frank Empire applicable to the relationship between the Roman and German inhabitants, or members of the different German tribes, is of especial interest to students of the Conflict of Laws, for according to Munroe Smith they were the starting point of modern European international private law. It should be noticed, however, that the rules applied only to men living under the Frank rule, men living outside the Frank Empire having no rights in that empire. As there was no complete territorial separation between the Romans and Germans and the different German tribes, the law of a man's birth was generally resorted to.

In Book III, entitled "Disintegration and Reintegration," the story of European law from 887-1500 is set forth. We find here an account of feudalism with its disintegrating influences, of the development of canon or ecclesiastical law, and of the law merchant, of the revival and reception of the Roman Law and of the history of law in France, Spain, Italy and Germany.

As one reads Munroe Smith's lectures on the *Development of European Law*, one cannot help feeling grateful for the fact that they were published, albeit after his death. On every page there is revealed the careful scholar, who knows whereof he speaks. The task was one of tremendous difficulty—so complex was the material with which he had to deal—but in the hands of Munroe Smith it has reduced itself to natural order and simplicity. One cannot speak of this little book in terms of too high praise. It can be most earnestly recommended to all interested in the history of law or in Comparative Law.

New Haven, Conn. ERNEST G. LORENZEN.

Sterilization for Human Betterment. By E. S. Gosney and Paul Popenoe. New York, The Macmillan Co., 1929. pp. xviii, 202. $2.

As may be inferred from the title, this book has been written to urge legislation to encourage sterilization for eugenic reasons. It is a publication of the Human Betterment Foundation, which was organized in 1928 under the laws of California. One of the purposes of the Foundation is to perpetuate the work which is summarized in this volume.

The book is based chiefly upon some six thousand operations for eugenic sterilization of the inmates of California state institutions. These observations form a material contribution to the understanding of many sides of the subject. The first chapter describes vividly yet without exaggeration the huge national problem of dealing with defectives and the insane. In subsequent chapters the history, extent, laws, and medical aspects of sterilization are briefly summarized. Considerable space is devoted to the discussion and refutation of arguments against sterilization. It seemed

to the reviewer that the authors are somewhat too optimistic that sterilization of the insane will shortly prevent insanity in future generations. Heredity unquestionably is more important in some forms of insanity than in others, and it probably acts by making some individuals more susceptible to environmental influences that are the precipitating cause of the mental disorder. The reader of this book unfortunately may draw the false conclusion that the insane are always born to insanity. Sterilization practically is an irreversible operation, but birth control by temporary measures is scarcely mentioned. The laws of many states covering birth control on one hand and sterilization on the other appear inconsistent, and a discussion of them together, at least in their eugenics aspects, would add to the value of the book.

The reviewer does not intend here to take a definite side on this controversial subject. He does plead for an open, fact-finding mind on the whole problem of heredity, birth control, and sterilization as applied to eugenics. One of the dangers and handicaps confronting a movement like this is that it makes an especially strong appeal to those who have a mental bias themselves. Enthusiasts who have a cause to advance may have difficulty in the evaluation of all factors of the problem. Then too often the cause is impeached rather than the evidence. However, the frank propaganda of this book ought not to prevent it from stimulating a great deal of cool, unemotional scientific study of the problems of applied eugenics.

New Haven, Conn. ARTHUR B. DAYTON.

From the Physical to the Social Sciences: Introduction to a Study of Economic and Ethical Theory. By Jacques Rueff. With an Introduction by Herman Oliphant and Abram Hewitt. Baltimore, The Johns Hopkins Press, 1929. pp. xxxiv, 159. $2.

This volume will interest students of law for a number of reasons. Not the least of these is the fact that it is the first to bear the imprint of the Johns Hopkins Institute of Law. Those who are curious concerning the objectives and the point of view of the originating faculty of this Institute will find at least a partial answer in the perusal of Rueff. For it may safely be said that the stimulus which called forth this publication was the general correspondence between the conception of the "scientific method" held by this French writer and that held by the founders of the Institute.

It will not be possible to give here an adequate picture of Rueff's fresh and stimulating analysis of scientific method. "Setting out the underlying logical method of the social sciences and showing that it must be the same in kind as that of the natural sciences constitute," say the editors, "the great contribution of Mr. Rueff's book." (p. xxiv).

According to Rueff, the "rational ego" is governed by the Law of Identity, which gives rise to the Law of Causality, "a device which we unconsciously require in order to reconcile our sensations with the Law of Identity." (p. 7). The "reasoning machine" employs the "mechanisms" of formal logic and mathematical analysis to formulate "rational structures in accordance with the Law of Non-contradiction." (p. 8). The so-called physical sciences, by observation and experimentation, build up empirical generalizations about the phenomena experienced. The Laws of Identity and Causality require the "creation of causes" (p. 23) to account for the observed phenomena. But "at the beginning of every science, the em-

pirical branch is necessarily anterior to the rational." (p. 24). "The empirical branch of geometry" was the science of the surveyor. (p. 27). Euclidean geometry is the "creation of causes" from which the empirical rules may be deduced and by which they can be made to appear as a rational whole. This creation of causes guides our future experiments and observations. It is valuable, as its results in the natural sciences demonstrate. And its application to the social sciences, especially to political economy, is illustrated in Part II.

Not the least interesting part of the book, from the lawyer's or judge's standpoint, is the Introduction by Oliphant and Hewitt. Their analysis of the present "methods" of adjudication furnishes ample justification for their conclusion that the study of law has "substantially no empirical branch or techniques." (p. xxviii). Taking a sample of a "new" case, they point out that there are three recognized types of approach to the problem of its decision: the transcendental, the inductive, and the practical methods. The transcendental method starts by assuming the existence of some general "principles" which contain the answer. The difficulty is that there are always competing principles, and the conclusion depends upon the choice of premises for the syllogism. The logic involved in the transcendental method is only the formal elaboration of the implications of the premises; the judgment involved in the selection of the premises is the heart of the decision. The need for an "empirical technique" by which this judgment may be guided becomes obvious.

The inductive method derives its premises by generalizing from prior decisions. But *ex hypothesi* we are dealing with a "new" case,—one in which there are factors sufficiently unlike those in any prior case to raise doubt whether this "new" case is to be classed with them or differentiated from them. In short, unless we fall into the "transcendental" method of taking as premises the overgeneralizations of past dicta, we must exercise judgment as to whether the case in hand is to be placed in the same pigeonhole with prior cases of a certain type or not. Here again, this judgment is the heart of the decision, and needs empirical data for its guidance.

The practical method is resorted to when no appropriate major premise is lying around handy, either as a "general principle of law" or as a generalization from prior cases. It is decision in accordance with "public policy." But the content of that verbal symbol, relative to the case in hand, is determined by the "judicial hunch," or the preconceptions as to social consequences which the judge happens to entertain. These may approximate the dominant opinion of the community, for the judge breathes the atmosphere of the current "climate of opinion." But there is "seldom any informed and exhaustive marshalling of the practical consequences *pro* and *con*." (p. xxv). "Common sense" rather than empirical techniques guides the judge. And this—or else chance—is also the often unconscious basis of the real judgment involved in the application of the other two methods to a "new" case. Adjudication is not, in practice, "social engineering."

The student of the law who accepts this analysis will be tempted to plunge into the reading of Rueff by the promise of the editors that the book will indicate how the empirical branch of the law may be developed. That the volume will prove stimulating is indicated by the fact that it was recently quoted by Justice Shientag, of the City Court of the City of New York, in his opinion in *Credit Assets Corporation v. Rockmore* (Special Term; Part II; November 26, 1929).

Baltimore, Md. JAMES HART.

The Working of the Minorities System under the League of Nations. By Joseph S. Roucek. Prague, Orbis Publishing Co., 1929. pp. 122.

In no field of its activities has the League of Nations been more subject to bitter criticism than in its handling of complaints from national minorities. Mr. Roucek undertakes a defense of the minorities system established by the Paris Peace Conference and administered by the Council of the League. In preliminary chapters the author discusses briefly the problem of self-determination and the efforts of the Principal Allied and Associated Powers to secure the signatures of Poland, Roumania, Jugoslavia, and other countries who secured territories in violation of the principle of nationality to a series of treaties providing for the protection of minorities. The legal basis of the present minorities system is shown to be this series of ten treaties placed under the guarantee of the League of Nations and subsequently confirmed and applied in several declarations, conventions, and bilateral treaties.

Internally the protection of minorities is sought by the treaties in provisions that no law, regulation, or official action shall conflict or interfere with the stipulations of the Minorities Treaties.

In establishing a procedure to make effective international protection of minorities, the Council of the League proceeded on the assumption that minorities were not made judicial persons nor subjects of international law by the Minorities Treaties. Therefore, by the procedure adopted, only members of the Council of the League may invoke the action of that body to prevent, for example, oppressive treatment or violent denationalization of national minorities. The minorities themselves may petition the Secretariat, but the Council takes no positive action except on the initiation of one of its members. If the Council decides to act, the state accused of oppressing its minorities is requested to take part in the proceedings, but no representative of the minority is admitted, presumably because the latter is not a state and is therefore not a subject of international legal rights and obligations. It is only natural, says the author, that minorities should be exasperated, but "before we can admit the minority as a juridical person, we must substitute for the foundation of International Law, the state, some other political form."

The international protection of minorities rests upon a bad principle, says the author; "it is really undesirable to have minorities constantly appealing to an outside authority for the redress of real or imaginary grievances." But it is merely a temporary measure, he hopes. The present system, though satisfactory in essentials does not always succeed in protecting minorities.

A formidable array of unnecessary footnotes, an overfondness for methodology, and a style which is lacking all too often in polish and clarity, remind one that this is a doctoral dissertation.

Ithaca, N. Y. HERBERT W. BRIGGS.

A Guide to Material on Crime and Criminal Justice. By Augustus Frederick Kuhlman, for the Committee on Survey of Research on Crime and Criminal Justice of the Social Science Research Council. New York, H. W. Wilson Co., 1929. pp. 633. $12.

This is a valuable collection of references, and is essential if one is to study the problem of the criminal The bibliography is limited to titles published or in manuscript before January 1, 1927, and thus omits many publications that the user might otherwise expect in a volume published in 1929. It must therefore be supplemented by use of the lists currently

published in The Journal of Criminal Law and Criminology. In a work of this character it is necessary to have a fixed date after which titles will not be included, but the value of such a work is not only in completeness but also in up-to-dateness, and it is hoped that supplements will keep it up to date. In studying materials on parole, for example, the user would desire to find conveniently not only the titles in this volume, but also such publications as the report of the *Pennsylvania Parole Commission* (1927), and *The Workings of the Indeterminate Sentence Law and the Parole System in Illinois* (1928). A person not familiar with technical library classifications will find the arrangement of the volume a little difficult, and may doubt the necessity for a classification as complete as that employed.

Erratum: The chapters referred to as particularly valuable to the practicing lawyer, in Professor Morgan's Review of *Questioned Documents* by Albert S. Osborn in (1930) 39 YALE L. J. 440, should read "XXXV and XXXVI," and not "XXV and XXVI."

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